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**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**UNITED STATES OF AMERICA, STATE OF
 CALIFORNIA, STATE OF DELAWARE,
 DISTRICT OF COLUMBIA, STATE OF
 FLORIDA, STATE OF HAWAII, STATE OF
 ILLINOIS, STATE OF LOUISIANA,
 MASSACHUSETTS, STATE OF NEVADA,
 STATE OF TENNESSEE, STATE OF TEXAS,
 COMMONWEALTH OF VIRGINIA, STATE
 OF GEORGIA, STATE OF INDIANA, STATE
 OF MICHIGAN, STATE OF MONTANA,
 STATE OF NEW HAMPSHIRE, STATE OF
 NEW MEXICO, STATE OF NEW YORK,
 STATE OF NEW JERSEY, STATE OF
 OKLAHOMA, STATE OF RHODE ISLAND,
 STATE OF WISCONSIN, STATE OF
 CONNECTICUT, STATE OF MINNESOTA,
 NEW YORK CITY, CHICAGO, EX REL.
 JOHN DOE,**

Plaintiff,

v.

ELI LILLY & COMPANY
Lilly Corporate Center
Indianapolis, Indiana,,

Defendant.

FILED

NOV 15 2011

RICHARD W. WITTONS
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

Case No.: C 09-3651 JSW

**FILED IN CAMERA
 AND UNDER SEAL**

**RELATOR/PLAINTIFF DOE'S
 RESPONSE TO THE COURT'S
 ORDER TO SHOW CAUSE**

1 Plaintiff/Relator John Doe ("Relator Doe") hereby submits this response ("Response") to the
2 Court's Order to Show Cause ("Show Cause Order") dated November 7, 2011 (*See* Docket No. 25).
3 In the Show Cause Order, the Court directed Relator Doe to show cause why the Complaint, the
4 September 7, 2011 Order, the United States' Notice of Election to Decline Intervention and all
5 subsequent filings not be unsealed pursuant to the terms of the Court's September 7, 2011 Order,
6 which ordered said unsealing. (*See* Docket No. 23).

7
8 Relator Doe does not oppose the unsealing of the United States' Notice of Election to
9 Decline Intervention and other subsequent filings in this case, but Relator Doe requests that the
10 Court not unseal the Complaint nor this Response filed by Relator Doe, in order to continue to
11 protect Relator Doe's anonymity. In support of this request, Relator Doe avers as follows:

12 1. This case was originally filed by Relator Doe in the United States District Court for
13 the Eastern District of Pennsylvania ("ED PA") on May 1, 2009 at case number 09-1863.

14 2. Relator Doe was a long term employee of Defendant Eli Lilly & Company ("Lilly")
15 and his knowledge of the illegal conduct pled in the Complaint came about as a result of his position
16 at Lilly, which was described in the original Complaint at ¶ 9.

17 3. Relator Doe simultaneously filed a Motion for Leave to Proceed Under a Fictitious
18 Name. Doe's request for anonymity was based on his fear and concern that he would be retaliated
19 against by Lilly and others in the pharmaceutical industry, if his identity was made known in the
20 Complaint. In addition, Relator Doe has another close family who is also employed by Lilly and he
21 feared that this member would also needlessly face retaliation or other retribution.

22 4. On May 29, 2009, the ED PA Court granted Relator Doe's Motion to Proceed Under
23 a Fictitious Name. The ED PA Judge found that the factors weigh heavily in favor of allowing
24 Relator Doe to proceed anonymously and none of the factors weighing against anonymity were
25 present.

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1 5. Shortly after the filing of Relator Doe's Complaint ("Doe/Lilly Complaint"), it was
2 determined by the United States that a *Qui Tam* complaint against Lilly, alleging similar allegations
3 regarding one of the drugs at issue in the Doe/Lilly Complaint, had been filed by another relator on
4 the same day in the Northern District of California.

5 6. Thereafter on June 25, 2009, with the consent of Relator Doe, the ED PA Court
6 entered an order transferring the Doe/Lilly Complaint to the United States District Court for the
7 Northern District of California. Subsequent to the transfer, the United States sought to relate the
8 Doe/Lilly Complaint to the other matter pending in the Northern District of California.

9 7. Following this Court's relation Order, Relator Doe filed a First Amended Complaint
10 in this Court which set forth additional factual allegations and added claims under the Chicago and
11 New York City False Claims Act ("FCA") ordinances. Thereafter with this Court's permission,
12 Relator Doe filed Second and Third Amended Complaints which made some additional factual
13 revisions and clarifications and added claims under FCA statutes of Connecticut, Minnesota, North
14 Carolina, Maryland and Colorado.

15 8. Following the transfer of the Doe/Lilly Complaint to this Court, Relator Doe left his
16 employment at Lilly and became employed at another large pharmaceutical company.

17 9. The First Amended Complaint and all subsequent Amended Complaints alleged very
18 specific information regarding Relator Doe's departure date from Lilly and the other information
19 regarding the division in which he worked at Lilly. For example, Paragraph 12 of all the Amended
20 Complaints alleged that Relator Doe "was an employee of Lilly up until **August 4, 2009**" and that he
21 was "employed in Lilly's neuroscience sales division". This precise information as to his departure
22 date, as well as other facts pled in the Amended Complaints could lead to the identification of
23 Relator Doe by Lilly, his current employer and others in the pharmaceutical industry, if the
24 Amended Complaint is unsealed.

25 10. Further, some Exhibits to the Amended Complaints provide more specific
26 information regarding Relator Doe which would reveal Relator Doe's identity. *See* in particular
27 Exhibits "B" and "M" to the Amended Complaints.

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1 11. These facts and Exhibits were necessary to establish the *bona fides* of Relator Doe's
2 allegations.

3 12. If the Amended Complaint is unsealed, there is a strong likelihood that Relator Doe's
4 identity will be revealed despite the John Doe pleading. There are sufficient facts pled and exhibits
5 attached which in essence reveal Relator Doe's identity.

6 13. The risk to Relator Doe if his identity is revealed cannot be understated.
7 Whistleblowers, and in particular whistleblowers in the pharmaceutical industry, are frequently
8 subject to retaliation, attack, ridicule, harassment and scorn. There is no doubt that Relator Doe will
9 face the same consequences if the Amended Complaint is unsealed and his identity revealed. In
10 addition, his close family member, who is still employed by Lilly, may also face retaliation or
11 harassment.

12 14. There is no reason to subject Relator Doe to such risk where he has filed a Notice of
13 Voluntary Dismissal Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). Because the
14 Amended Complaint will not be pursued nor served upon Lilly, there is no need for Lilly to know
15 Relator Doe's identity. Lilly will not suffer any harm or prejudice nor incur any damage, if the
16 Amended Complaint remains sealed and Relator Doe's identity remains unknown. In addition,
17 keeping the Amended Complaint sealed will continue to protect Relator's Doe's family member.

18 15. In light of the voluntary dismissal, there is no public policy reason to unseal the
19 Amended Complaint. Because there will be no litigation as a result of the dismissal, the public has
20 no strong interest in knowing Relator Doe's identity. Relator Doe is not a public figure, thereby
21 further reducing the need for public disclosure. Whatever public interest in the matter exists, if in
22 fact there is any, can easily be satisfied through the unsealing of the United States' Notice of
23 Election to Decline Intervention and Relator Doe's Notice of Voluntary Dismissal. These
24 documents give the public notice of the filing but do not disclose the identity of Relator Doe.

25 16. There is simply no basis to expose Relator Doe and his family member to ostracism
26 and retribution in the pharmaceutical industry by unsealing the Amended Complaint.

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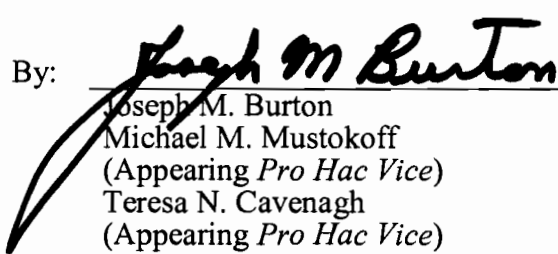
1 Accordingly, Relator Doe respectfully requests that the Court keep the Amended Complaint
2 and this Response sealed despite the Court's prior unsealing Order dated September 7, 2011.

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5 Dated: November 15, 2011

Respectfully submitted,

DUANE MORRIS LLP

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7 By:


Joseph M. Burton
Michael M. Mustokoff
(Appearing *Pro Hac Vice*)
Teresa N. Cavenagh
(Appearing *Pro Hac Vice*)

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11 Attorneys for Plaintiff/Relator
John Doe
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CERTIFICATE OF SERVICE

I, Teresa N. Cavenagh, hereby certify that a true and correct copy of the foregoing Relator Doe's Response to the Court's Order to Show Cause has been served this 15th day of November, 2011, by certified mail, return receipt requested unless otherwise noted upon the following:

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15 /s/ Teresa N. Cavenagh

16 Teresa N. Cavenagh
17 Admission *Pro Hac Vice*
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